



STATE TAXES ON MARIJUANA

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In 2000, voters approved Amendment 20, allowing the possession and use of medical marijuana in Colorado. In 2012, voters approved Amendment 64, legalizing marijuana for use by adults aged 21 and older. Sales of retail marijuana for adult use began on January 1, 2014.

Three taxes apply to marijuana, but medical and retail marijuana are taxed differently. Both medical and retail marijuana are subject to the 2.9 percent state sales tax, which is applied to most purchases in the state. Additionally, retail marijuana is subject to a 10 percent special sales tax, levied on retail sales, and a 15 percent excise tax, levied on the first transfer of marijuana from a wholesaler to a processor or retailer. These additional taxes on retail marijuana were approved by voters with the passage of Proposition AA in 2013. Table 1 shows the state taxes that apply to medical and retail marijuana.

Table 1
State Taxes on Medical and Retail Marijuana

	Medical Marijuana	Retail Marijuana
State Sales Tax (2.9%)	✓	✓
Special Sales Tax (10.0%)		✓
Excise Tax (15.0%)		✓

State Sales Tax

The state collects a 2.9 percent sales tax on the sale of retail and medical marijuana. The sales tax applies to the retail sale of tangible property, unless

there is a specific exemption. Because there is no exemption for marijuana, the tax is collected from the consumer by the retailer. The retailer then remits the tax to the Department of Revenue each month.

The sales tax exemption for prescription drugs does not apply to medical marijuana. Medical marijuana use requires a doctor's recommendation rather than a prescription.

State sales tax revenue from the sale of most products are deposited in the state General Fund. However, sales tax revenue from medical and retail marijuana is deposited in the Marijuana Tax Cash Fund, described later in this issue brief.

Proposition AA Taxes

Amendment 64 directed the legislature to create an excise tax on retail marijuana to fund school construction. Because the state constitution requires new taxes to be approved by voters in a separate election,¹ this tax was not instituted until the passage of Proposition AA in 2013. Proposition AA included two taxes on retail marijuana: an excise tax and a special sales tax.

Excise tax. An excise tax is a tax on the use or consumption of certain products, such as gasoline, alcohol, or cigarettes. The tax is generally collected at the wholesale level and passed on to consumers in the retail price. Retail marijuana cultivators are responsible for remitting a 15 percent excise tax when they first sell or transfer marijuana to a processor, store, or other cultivator. For the purpose

¹ Colo. Const. art X, § 20 (4)(a).

of computing excise taxes, the wholesale price of unprocessed retail marijuana is determined according to a per-pound rate for flowers, a per-pound rate for trim, and a per-unit rate for immature plants. Every six months, the Department of Revenue determines average wholesale prices for unprocessed marijuana in these categories, and all unprocessed retail marijuana is taxed accordingly. Medical marijuana is not subject to the state excise tax.

Under Amendment 64, the state excise tax rate is limited to 15 percent until January 1, 2017. The state legislature may seek voter approval to raise the excise tax rate on or after that date. The first \$40 million in revenue raised by the excise tax each year is credited to the Building Excellent Schools Today program, which is used for the construction of public schools. Excise tax revenue is estimated at \$11.2 million in FY 2014-15 and \$11.7 million in FY 2015-16. If the amount collected is greater than \$40.0 million, the excess will be deposited in the Marijuana Tax Cash Fund, described later in this issue brief.

Retail marijuana cultivators were not licensed to begin growing marijuana until January 1, 2014, the same date retail sales began. Until plants grown by licensed retail cultivators matured, stores relied on medical marijuana cultivation facilities to supply their inventory. For this reason, producers are allowed a single transfer of unprocessed marijuana grown by a medical cultivator to a retail marijuana processor or store. The state excise tax is not levied on this one-time transfer.

Special sales tax. Proposition AA added a special state sales tax to be applied when a consumer purchases retail marijuana from a licensed store. The special sales tax rate is initially set at 10 percent. The legislature can raise or lower the tax rate at any time through legislation; however, this rate cannot exceed 15 percent without further voter approval. The special sales tax is levied in addition to taxes applied to other retail purchases, including the 2.9 percent state sales tax and local sales taxes. All sales taxes are applied to the retail price paid by the consumer, which includes the state excise tax when it is passed through to consumers. Medical marijuana is not subject to the special sales tax, but remains subject to the preexisting 2.9 percent state sales tax.

Amendment 64 allows cities and counties to enact local bans against the cultivation, processing, and sale of retail marijuana. Per Proposition AA, cities and counties that allow retail marijuana sales receive 15 percent of state revenue collected from the special sales tax. Tax revenue distributions are proportional to the percentage of retail marijuana sales within each jurisdiction. Cities and counties may use this revenue at their discretion. On April 1, the state legislature is required to determine whether the percentage of revenue allocated to cities and counties is set at an appropriate level. The remaining share of special sales tax revenue, currently 85 percent, is deposited in the Marijuana Tax Cash Fund.

Marijuana Tax Cash Fund

In 2014, the legislature created the Marijuana Tax Cash Fund (MTCF) to collect marijuana tax revenue not already designated for another use.² State sales tax revenue collected on medical and retail marijuana sales is paid to the fund, along with 85 percent of special sales tax revenue and any excise tax revenue in excess of the first \$40 million each year.

MTCF revenue is appropriated annually to health care, health education, and substance abuse prevention and treatment programs at the discretion of the legislature. Revenue is appropriated from the MTCF for distribution during the fiscal year after it is received. For FY 2014-15, \$18.5 million was appropriated from the MTCF to fund programs in the Department of Human Services, the Department of Public Health and Environment, the Department of Education, the Department of Law, and the Governor's Office.

Local Taxes

Cities and counties across the state collect their own sales taxes. Local tax rates apply to sales of both medical and retail marijuana. In addition, Proposition AA allowed counties and statutory cities to apply a special sales tax to retail marijuana. Home-rule cities may also levy a special sales tax on retail marijuana.

²Senate Bill 14-215.